

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA
WESTERN DIVISION**

CINDY MURRAY,)	
)	
)	
Plaintiff,)	
)	
v.)	Case No. 1:15-cv-59
)	
FIRST NATIONAL BANK OF OMAHA,)	
)	
Defendant.)	
)	

PLAINTIFF'S STATEMENT OF MATERIAL FACT

Plaintiff, CINDY MURRAY (“Plaintiff”), pursuant to LR 56(a)(3), hereby submits the following Statement of Material Facts setting forth each material fact as to which she contends there is no genuine issue to be tried, filed in support of, and contemporaneously with, her Motion for Partial Summary Judgment.

1. Defendant, FIRST NATIONAL BANK OF OMAHA (“Defendant”), placed telephone calls to telephone number (402) 250-2340. *See* Appendix at p. 1, Defendant’s Response to No. 1.

2. Telephone number (402) 250-2340 is assigned to Plaintiff’s cellular telephone, and Defendant knew this was Plaintiff’s cell phone number. *See* Appendix at p. 2, Defendant’s Response to No 14; *see also* Doc. No. 1 at ¶ 9.

3. Defendant places telephone calls from telephone number (800) 537-3302. *See* Appendix at p. 1, Defendant’s Response to No. 2.

4. Plaintiff's cell phone records show Defendant called Plaintiff's cell phone from telephone number (800) 537-3302 two hundred seventy-three (273) times from August 1, 2015 through November 6, 2015. *See* Appendix at pp. 4-28.

5. These calls were *not* for emergency purposes. *See* Appendix at p. 3, Defendant's Response to No. 20.

6. Defendant placed pre-recorded voicemail messages on Plaintiff's cell phone. *See* Appendix at p. 2, Defendant's Response to No. 15.

7. Defendant used an Avaya Predictive dialer version 5.1 to place these calls. *See* Appendix at pp. 29-30, Defendant's Answer to Interrogatory 4.

8. Jeffrey Hansen was identified by Plaintiff as an expert witness in this matter to analyze and evaluate the telephone dialing system used by Defendant in this matter. *See* Doc. No. 22.

9. Defendant failed to designate an expert in this matter. *See* Docket.

10. On August 25, 2015, Defendant spoke with Plaintiff. *See* Appendix at p. 1, Defendant's Response to No. 3.

11. During the conversation on August 25, 2015, Plaintiff instructed Defendant to "quit calling my cell phone." *See* Doc. No. 25-4 at p. 10.

12. Defendant memorialized this conversation in its account notes. *See* Appendix at p. 32.

13. Defendant's account notes regarding the August 25, 2015 conversation state "STOP CLLING MY CELL PHNE". *Id.*

14. Defendant called telephone number (402) 250-2340 one hundred forty-five (145) times after August 25, 2016. *See* Appendix at pp. 12-28.

15. These calls were placed using telephone number (800) 537-3302. *Id.*

Respectfully submitted,

Dated: November 1, 2016

/s/ Adam T Hill
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